

ITEM 2: REGISTRAR'S SUBMISSION PACKAGE

Virginia Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals

Analysis of Proposed Regulations: 18 VAC 115-30-10 et seq.

SUMMARY OF PROPOSED REGULATION

Amendments to Regulations Governing the Certification of Substance Abuse Counselors are proposed to provide for certification by endorsement for individuals who hold national certifications in substance abuse counseling obtained by substantially equivalent requirements to those in the board's regulations. The Board also proposes changing the current requirement for supervisors to have both national certification and two year's experience as Virginia certified substance abuse counselor to allow individuals meeting either criterion to act as supervisors. To reduce the burden of the supervision requirement on applicants, the Board proposes accepting group supervision hours as equivalent to individual supervision hours, for up to half of the total supervised hours, and changing the face-to-face hour requirement from 2 hours per week to an average of two hours per week. A new licensure title is added to the list of acceptable supervisors. To reduce the financial burden on individuals who wish to renew a certification which has lapsed for more than four years, the board is proposing a reapplication alternative to the current cumulative renewal and penalty fee requirement. The board is recommending an amendment to the dual relationship prohibition in the Standards of Practice to specify that sexual relationships with a client are strictly prohibited for five years following the cessation of services. The board also proposes general reformatting of the regulations, eliminating obsolete and unnecessary language, and including new language where needed to clarify requirements.

1. Basis of the Regulation:

Title 54.1, Chapter 24 and Chapter 35 of the *Code of Virginia* provide the basis for these regulations.

Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to assess fees, establish qualifications for certification and the responsibility to promulgate regulations.

Chapter 35 establishes the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals and authorizes that board to administer the certification of substance abuse counselors.

§54.1-103 authorizes the board to promulgate regulations specifying additional training or conditions for individuals seeking certification by reciprocity or endorsement.

2. Statement of Purpose:

In response to Governor Allen's Executive Order 15, the board conducted a comprehensive review of its regulations to ensure that the only regulations that remain in effect are those that are essential to protect the health, safety and welfare of the public. The board is proposing reformatting its regulations, eliminating obsolete and unnecessary language, and including new language where needed to clarify requirements.

The Executive Order also mandated that no regulation should remain in effect if there are less burdensome or intrusive alternatives available to achieve the purpose of the regulations. To simplify the application process for experienced practitioners, the board is proposing certification without examination for individuals who hold national certifications obtained by substantially equivalent requirements to those in the board's regulations. To reduce the burden of obtaining the required supervised training, the board proposes amending the rule that requires state certification with two years' experience *and* national certification for individuals acting as supervisors to allow for acceptance of either. The board also proposes accepting group supervision as equivalent to face-to-face supervision, for up to ½ of the total supervised hours. This will expedite the certification process for many individuals, thus providing greater access to certified professionals for individuals and families that need substance abuse counseling services, which is in the best interest of the public health, safety and welfare.

To reduce the financial burden on individuals who wish to renew a certification which has lapsed for more than four years, the board is proposing a reapplication alternative to the current cumulative renewal and penalty fee requirement.

3. Substance of the Regulations:

The key amendments for each regulation are summarized as follows:

A. Part I. General Provisions

18 VAC 115-30-10. To reduce duplication and eliminate the possibility for discrepancies with statute, the board proposes replacing definitions of terms which are set forth in statute with a reference to the *Code* section where they appear. For clarification, the board proposes adding a definition for “*group supervision*.”

18 VAC 115-30-20. The board proposes repeal of this section, as there is no reason to have these regulations incorporated by reference in another chapter.

18 VAC 115-30-30. The board proposes repeal of the name change fee, which is unnecessary.

B. Part II. Requirements for Certification

Amendments are proposed to 18 VAC 115-30-40 to remove unnecessary language and clarify the documentation required in the application package. The board also proposes elimination of the reference letter requirement.

A new section (18 VAC 115-30-45) is proposed to set forth specific requirements for certification by endorsement for experienced counselors certified in other jurisdictions. This section includes a new provision to certify without examination individuals who hold certain national certifications in substance abuse counseling.

The registration requirement set forth in 18 VAC 115-30-60 is not a new requirement, but has been relocated for emphasis. A new subsection has been added to delineate supervisor requirements.

To reduce the burden of the residency requirement, the board proposes the following changes:

- Changing the face-to-face consultation requirement with the supervisor from *at least 2* hours per week to *an average* of two hours per week. To prevent confusion, the total hours of consultation that should be completed during the year of training is specified.
- Accepting group supervision hours as equivalent to face-to-face supervision hours (for up to ½ of the total hours).
- Accepting individuals with state certification and *either* two years’ work experience in substance abuse *or* national certification in substance abuse counseling to act as supervisors, as opposed to both certifications as required under the current rule.
- Adding a new licensure title to the list of acceptable supervisors.

18 VAC 115-30-70. Minor changes are proposed to clarify the instruction and remove the reference to an outdated regulation which is no longer in effect.

18 VAC 115-30-80. The board proposes repeal of this section based on advise from the Attorney General's office that it is in conflict with the Americans with Disabilities Act.

C. Part III. Examinations

18 VAC 115-30-90. The board proposes removing unnecessary language from this section and adding an instruction that individuals applying for licensure by endorsement must pass an examination.

18 VAC 115-30-100. The board proposes repeal of this section which is unnecessary.

D. Part IV. Certification Renewal; Reinstatement

A requirement to notify the board of a change of address within 60 days has been added to 18 VAC 115-30-110.

The board proposes a flat reinstatement application fee for certifications that have expired beyond four years to replace the current requirement set forth in 18 VAC 115-30-120 which assesses cumulative renewal and penalty fees for all lapsed renewal periods, which can become excessive over a long period of time.

The board has determined that the name change fee is unnecessary and proposes repeal of 18 VAC 115-30-130.

Part VI. Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

The board is recommending amendments to the standards of practice set forth in 18 VAC 115-30-140 to remove unnecessary language and clarify the standards and improve their enforceability. Language that duplicates statute was struck and related subdivisions were combined where appropriate. The board is recommending a new language for the prohibition on dual relationships that is more consistent with the regulations of other boards, and the codes of ethics of professional associations.

A minor change is proposed for 18 VAC 115-30-150 to consolidate language from subdivisions A 1 and A 6 into one subsection.

The board proposes including a provision in 18 VAC 115-30-160 to require a two year waiting period for reapplication for individuals whose certificate has been revoked or denied renewal. This rule is currently in effect for individuals licensed by the Board as professional counselors.

4. Issues of the Regulation.

A. Definitions.

Two definitions in the regulations are set forth in statute. This results in discrepancies when there are changes in statute, such as the recent name change of the board. The board proposes referencing the *Code* for definitions that duplicate statute, and adding a definition for “group supervision” which specifies the limitation of six persons in a group that is currently set forth under 18 VAC 115-30-60.

Advantages: Referencing definitions in the *Code* and removing unnecessary definitions streamlines the regulations and eliminates duplication. Additionally, the regulations will remain in conformance with statute in the event statutory definitions are amended.

Disadvantages: The proposed changes present no disadvantages to the general public, applicants, certificate holders, the board or the agency.

B. Fees

The board does not assess a name change fee in its other regulations, and determined that it is an unnecessary burden to certificate holders.

Advantages: Removing the fee will reduce the administrative work involved in processing name changes and reduce frustration for certificate holders.

Disadvantages: There are no disadvantages to the proposed change.

C. Prerequisites for certification by examination.

The language in the beginning of this section duplicates statute. Instructions on registration of supervision in subdivision B.2 are not appropriate to this section and are listed under 18 VAC 115-30-60. Reference letters do not provide useful information to supplement the supervisory evaluations. The board proposes rescinding the reference letter requirement, and making other minor changes to clarify the documentation requirements.

Advantages: The proposed changes simplify the application process by rescinding the reference letter requirement, clarify the documentation required, and remove language that is unnecessary or not appropriate to this section.

Disadvantages: There are no disadvantages to the proposed changes.

F. Pre-requisites for certification by endorsement

Currently, applicants with lengthy experience as substance abuse counselors in other jurisdictions must document the same information as new practitioners, which includes official documentation of supervised practice that may have taken place long ago and is therefore difficult or impossible to verify. The board is proposing an alternative method for documenting experience, and acceptance of certain national certifications as criteria for endorsement.

Advantages: Endorsement of experienced practitioners holding national certifications will expedite the certification process for these applicants by as many as 10 months, which may reduce delays in the ability to obtain employment where certification is a requirement for employment.

Disadvantages: The proposed changes present no disadvantages to applicants, the agency, or the general public.

G. Experience requirements.

An issue the Board has addressed with all of its regulations under the Executive Order 15 (94) mandate is the difficulty for applicants to find qualified individuals to provide the required supervised training. The Board values this training as equally important to the didactic education requirement for the development of competent practitioners. To increase the availability of qualified supervisors, the board has added a new licensure title to the list of approved supervisors, and proposes amending the rule that requires both national certification *and* two years' experience for state-certified individuals acting as supervisors. The board also proposes accepting group supervision as equivalent to face-to-face supervision, for up to ½ of the total supervised hours.

The board also proposes reformatting this section, deleting unnecessary language and changing language to clarify the requirements when needed.

Advantages: Broadening the criteria for acceptable supervisors will enable individuals interested in this certification to more easily obtain the required supervised training. Individuals who hold a national certification will not have to wait until two years post-state certification to act as supervisors. Individuals who have two years experience under state certification will not be compelled to obtain a state certification to act as supervisors.

Disadvantages: There are no disadvantages to the proposed change.

H. Character and Professional Integrity

At issue is the potential for conflict with the Americans with Disabilities Act, which prohibits denial of a government service (i.e. certification) based on a disability. The board proposes repeal of this section.

Advantages: Repeal of this language eliminates conflict with federal law.

Disadvantages: There are no disadvantages.

I. Examination Requirements.

Examination requirements under the current regulations are set forth under two sections which can be reduced and consolidated by eliminating language that is unnecessary. Because a new section on certification by endorsement is included in the proposed regulations, the requirement for a passing exam score in the base state of certification or for national certification is reiterated in this section.

Advantages: Elimination of unnecessary language makes the regulations more concise.

Disadvantages: There are no disadvantages to the proposed changes.

J. Late Renewal

The late renewal reinstatement procedure set forth in 18 VAC 115-30-120 requires payment of cumulative certification and penalty fees, which is overly burdensome for individuals who are returning to a Virginia practice after a lengthy absence. The Board proposes a simple reapplication fee for individuals who have not renewed their certification for four years.

Advantages: Reinstatement will be much less costly for counselors who are returning to Virginia to practice.

Disadvantage: There is no disadvantage to the proposed change.

K. Legal name change

Because the board resolved to eliminate the name change fee which is not essential, and since § 54.1-111 requires certificate holders to provide accurate information on an application (which can include the renewal application), the board determined that this section is not necessary and can be deleted. As an administrative policy, the agency requires official documentation of name change prior to making a change in the name of record on the agency's database.

Advantages: Elimination of unnecessary language makes the regulation more concise.

Disadvantages: There are no disadvantages to the proposed change.

L. Standards of Practice

The Board determined that the language in the first subsection of the Standards of Practice

was unnecessary, as it duplicates statute. The board also determined that the language addressing the confidentiality of client records could be improved by citing the specific state and federal laws which create exceptions to the confidentiality rule.

The primary issue the board addressed in the Standards of Practice which the board addressed was the prohibition on dual relationships. During its concurrent review of its regulations for professional counselor regulations, the board had developed new language for the prohibition on dual relationships which sets forth a five year prohibition on sexual relationships, provided there is no client exploitation. The board made this change because it determined that the stringency of the former rule exceeded the ethical standards of national associations, and may be unreasonable in some situations, such as brief intake activities, which do not create the same potential for client exploitation as long term treatment.

Advantages: The proposed changes make the standards more concise, more reasonable and easier to enforce.

Disadvantages: There are no disadvantages to the proposed changes.

5. Estimated Fiscal Impact

A. Projected number of persons affected and their cost of compliance:

Approximately 1100 certificate holders, and 150 new applicants and trainees per year are affected by these regulations.

The endorsement provision should expedite processing of applicants who hold certain national certifications by about ten months (the current regulations only provide for endorsement of individuals with equivalent certifications in other states). Assuming earnings of \$1500 to \$2000 per month, the potential earnings that might otherwise be lost could be \$15,000 to \$20,000. More significantly, endorsement applicants will be less likely to miss employment opportunities if certification is a requirement of an employer, and substance abuse counseling services will be more readily available to the public.

Acceptance of group supervision hours as equivalent to face-to-face hours will reduce the time and expense of supervision for individuals who do not have on-site supervision available at their agency.

The proposed reinstatement process will reduce the cost of reinstatement from several hundred dollars, depending on the length of absence, to \$40.00.

B. Costs to the agency for implementation:

Approximately \$2000 will be incurred for printing and mailing public notices and amended regulations.

All costs to the agency are derived from fees paid by licensees, and no fee increases are necessary.

C. Costs to local governments

The proposed amendments will not fiscally impact local governments.

D. Fiscal Impact Prepared by the Department of Planning and Budget:

Attached

E. Agency Response:

The Board concurs with the analysis of the Department of Planning and Budget.

Board of Licensed Professional Counselors,
Marriage and Family Therapists and Substance Abuse Professionals
18 VAC 115-3010 et seq.

FORMS

Renewal Notice and Application, C-45128, rev. 8/97